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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
PAIK, SANG YEOP	
ART UNIT	**PAPER NUMBER**
3742	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/501,000	SCHONEBERG, ORIANA	
	Examiner	Art Unit	
	Sang Y. Paik	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-11 and 14-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-11 and 14-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Hart (US 5,445,349).

Hart shows a therapeutic apparatus having a plurality of therapeutic devices including loose granular materials, which can also inherently form a vaporizer when the liquid is applied thereto, to provide heating or cooling effects and the therapeutic devices are camouflaged with a bag which holds the therapeutic devices.

Since Hart shows the same loose granular materials as that of the claimed vaporizer, the device in Hart would inherently perform as a vaporizer as can be done with the claimed device. It is noted that since the manner of the operating does not differentiate the apparatus claim, and also claims that are directed to apparatus must be distinguished from the prior art in terms of structure rather than its intended function.

3. Claims 1 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Mandish (US 6,315,959).

Mandish shows a therapeutic apparatus such as an air freshener furniture having therapeutic devices camouflaged to produce a therapeutic vapor using heating element wires (55) and a fan.

4. Claims 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Humphreys (US 5,233,768).

Humphreys show a plurality of therapeutic devices including a plurality of magnets and a plurality of acupressure points on the shoe insole.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 4, 7, 10, 11, 14, 19 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt (US 4,969,502) in view of Owens (US 5,591,221).

Hunt shows a therapeutic apparatus having a camouflaged element such as a clothing element concealing therapeutic devices such as heating elements and a vibrator to provide the therapeutic effects. But Hunt does not show a vaporizer for producing a therapeutic vapor.

Owens shows therapeutic apparatus having a vaporizer which contains the therapeutic liquid to produce the therapeutic vapor to a person, and Owen further shows the apparatus can be shaped in animal figures or in the clothing garments.

In view of Owens, it would have been obvious to one of ordinary skill in the art to adapt Hunt with the apparatus with the vaporizer which produces the therapeutic vapor, and also provide the apparatus in the shape of animal figures or any other forms which would be easily accessible to people for providing the therapeutic effects.

With respect to claim 10, the vibrator of Hunt would inherently produce the frequency.

With respect to claims 26 and 27, Hunt shows that the therapeutic devices can be incorporated in various clothing wears as well as other wearable personal items such as belts, helmets or hand held items. It would also have been obvious to one of ordinary skill in the art to provide the therapeutic devices to the claimed hat or a purse since Hunt and Owens allows one of ordinary skill a variety of clothing items to incorporate such the therapeutic devices to conveniently provide the therapeutic effects including the heating, massaging or/and therapeutic vapors to people.

7. Claims 5, 6 and 15-17are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Owens as applied to claims 1, 4, 7, 10, 11, 14, 19 and 25-29 above, and further in view of Hyatt (US 6,329,644) and Hart (US 5,445,349).

Hunt in view of Owens shows the therapeutic apparatus claimed except the heating means with loose granular materials.

Hyatt shows a therapeutic apparatus with a heat storing materials such as the thermal retention mass to store heat, and Hart shows it is known in the art that loose granular materials such as rice or flax seeds are known to retain heat to provide the therapeutic heat.

In view of Hyatt and Hart, it would have been obvious to one of ordinary skill in the art to adapt Hunt, as modified by Owens, with the heating means including the loose granular materials to enhance and prolong the therapeutic heat over an extended time of period to provide a more comfort.

With respect to claims 6 and 17, Hart shows the same loose granular materials as that of the claimed loose granular materials which form a vaporizer. The loose granular materials would inherently be capable of performing as a vaporizer when a vaporizing liquid is applied to the

heated granular material, and thus meets the claims. It is also noted that since the manner of the operating does not differentiate the apparatus claim, and also claims that are directed to apparatus must be distinguished from the prior art in terms of structure rather than its intended function.

8. Claims 8, 9, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Owens as applied to claims 1, 4, 7, 10, 11, 14, 19 and 25-29 above, and further in view of Humphreys (US 5,233,768).

Hunt shows the apparatus claimed except the therapeutic means which generates pressure points and bioelectromagnetic field.

Humphreys shows a therapeutic means such as a plurality of permanent magnets along with the pressure points for the therapeutic purposes to generate the magneticfields. In view of Humphreys, it would have been obvious to one of ordinary skill in the art to adapt Hunt, as modified by Owens, with the permanent magnets along with the pressure points as the alternative therapeutic devices to provide the therapeutic effects including the bioelectromagnetic fields.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt in view of Owens as applied to claims 1, 4, 7, 10, 11, 14, 19 and 25-29 above, and further in view of Mandish (US 6,315,959).

Hunt in view of Owens shows the therapeutic apparatus with a vaporizer, but they do not show the vaporizer with a heating element and a fan.

Mandish shows a vaporizer with a heating element with a fan to facilitate an improved air circulation of the vaporized liquid. In view of Mandish, it would have been obvious to one of ordinary skill in the art to adapt Hunt, as modified by Owens, with the vaporizer with a heating

element and a fan to enhance the air circulation of the vaporized liquid and thus further improve the therapeutic effects.

Response to Arguments

10. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

With respect to Hart, the applicant argues Hart does not show a vaporizer which does not have camouflaged means and a decorative soft sculpture. As stated in the ground of rejection, Hart shows the same material, i.e., loose granular materials, to be a vaporizer, and it would be capable of being used as a vaporizer as claimed by the applicant. Furthermore, the camouflaged means and the decorative sculpture are broad in scope that the device of Hart would meet such recitations. It is also shown that the device of Hart is positioned adjacent to a person (see Figure 1).

With respect to Humphrey, the applicant argues that it does not show a therapeutic clothing. A clothing is also a broad term which includes a wearable apparel. Since the device of Humphrey is wearable, it meets the claimed recitation. Humphrey shows the claimed nodules at selected points (see Figure 1).

With respect to Mandish, the applicant argues it does not show a decorative soft sculpture that is worn by the person. It is noted that such sculpture is not claimed in claims 1, 2 and 30. Furthermore, the device of Mandish can be a furniture, which can be any movable item or article in a room, and thus meets the claimed invention.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the applied prior art provides different forms of the therapeutic effects and further shows having different forms of therapeutic effects such as heating and massaging therapeutic effects to be combined together. Thus, with different therapeutic modes or forms available to a user as a general knowledge in the art, it would have been obvious to one of ordinary skill in the art to combine to such therapeutic effects to increase or provide different therapeutic effects as necessary or wanted by a user.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y. Paik whose telephone number is 571-272-4783. The examiner can normally be reached on M-F (9:00-4:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. P.

Sang Y Paik
Primary Examiner
Art Unit 3742

syp